

09 JUN 2006



UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BUCHANAN INGERSOLL PC
(INCLUDING BURNS, DOANE, SWECKER & MATHIS)
POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

In re Application of	:	DECISION ON
SCHUTZE, Francois et al	:	
PCT No.: PCT/FR2003/003120	:	
Application No.: 10/532,041	:	
Int. Filing Date: 21 October 2003	:	
Priority Date: 21 October 2002	:	PAPERS FILED
Attorney's Docket No.: 032013-121	:	
For: PHARMACEUTICAL COMPOSITION	:	
COMBINING ... AGENT	:	UNDER 37 CFR 1.42

This is a decision on the declaration filed 22 March 2006, which has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 21 April 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because an executed oath or declaration was not provided at such time.

On 23 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date. It indicated the current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68. The Notice stated that the above must be submitted within two months from date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

To satisfy the requirements of 35 U.S.C. 371(c)(4) that an oath or declaration of the inventors be submitted, applicants submitted on 22 March 2006 a declaration signed by Nathalie TOCCOEN as legal representative and heir of the deceased inventor, Alain TOCCOEN.

DISCUSSION

A review of the application file reveals that the declaration does not comply with 37 C.F.R. §1.63 since both the mailing address of the legal representative and deceased inventor is required.

Because the inventor Alain TACCOEN is deceased and Nathalie TACCOEN has been appointed as the legal representative for the deceased inventor, 37 C.F.R. §1.497(b)(2) indicates that "[i]f the person making the oath or the declaration or any supplemental or oath or declaration is not the inventor (§§1.42, 1.43, or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state (the inventors citizenship and so on). If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative." (see MPEP § 409.01)

In this instance, applicants have only listed the legal representative's citizenship, residence and mailing address but the citizenship, residence and mailing address of the deceased inventor has not been provided in the declaration as required under 37 C.F.R. §1.63.

Consequently, applicants have not satisfied the requirements under 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is not accepted.

Applicant is required to provide an oath or declaration in compliance with 37 CFR 1.497(a)-(b) within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 272-0459